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Statutes:

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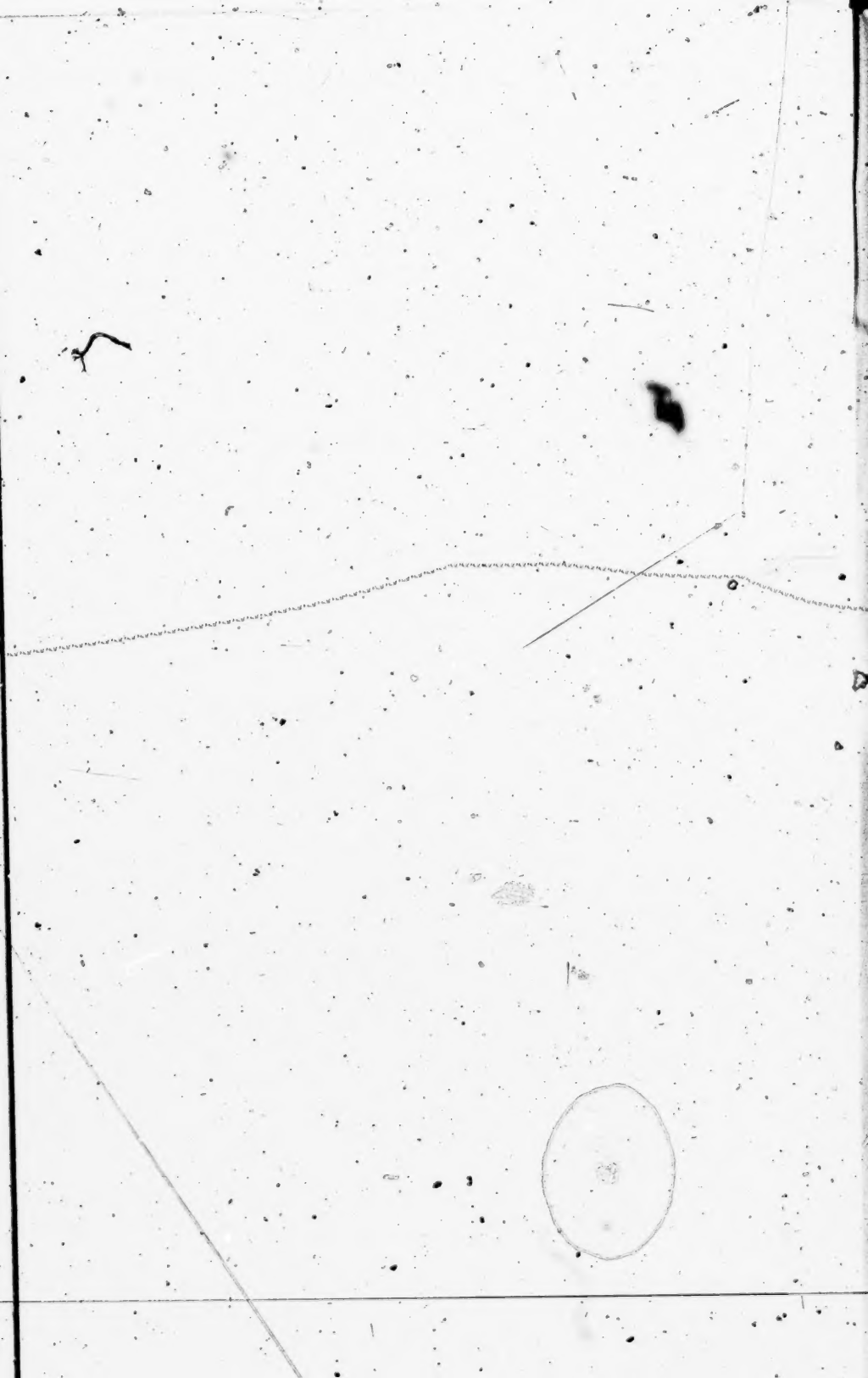
Sec. 812 (26 U.S.C., 1952 ed., Sec. 812) — 2, 4, 7

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In the Supreme Court of the United States

October Term, 1959

No. 174

WILLIAM J. APLINGTON, AS ADMINISTRATOR WITH THE WILL ANNEXED OF THE ESTATE OF WALTER CLARK, DECEASED, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims is reported at 169 F. Supp. 815. (Pet. 13-16.)

JURISDICTION

The judgment of the Court of Claims was entered on January 14, 1959 (Pet. 13-16), and a motion for rehearing was denied on April 8, 1959. The petition for certiorari was filed on July 2, 1959. The jurisdic-

tion of this Court is invoked under 28 U.S.C., Section 1255.

QUESTION PRESENTED

Whether the court below properly dismissed the petitioner's suit for refund of estate tax paid on the ground that the claim for refund was not filed within the statutory period of limitations prescribed in Section 910 of the Internal Revenue Code of 1939.

STATUTES INVOLVED

The statutes involved are set forth in the Appendix.

STATEMENT

The decedent, Walter Clark, died on May 28, 1950. The plaintiff below, William J. Aplington (the taxpayer), was appointed administrator of decedent's will on July 12, 1950. On August 20, 1951, the taxpayer filed an estate tax return and paid the tax shown thereon in the amount of $109,888.54. A claim for refund of this amount was filed on June 12, 1956, on the ground that the decedent's estate had escheated to LaSalle County, Illinois, under orders of the probate court of that county. The claim was disallowed by the Commissioner of Internal Revenue for the reason that it was not filed within the three-year period of limitations prescribed in Section 910 of the Internal Revenue Code of 1939, and for the further reason that the escheat did not constitute a transfer of decedent's property within the meaning of the deduction provisions of Section 812(d). This suit for refund followed. (Pet. 13-14, 19.)

The Court of Claims granted the motion of the United States to dismiss on the ground that the refund claim had not been timely filed. (Pet. 13-16.)

ARGUMENT

The decision below is correct and there is no conflict of decisions or other reason warranting review.

1. Section 7422(a) of the Internal Revenue Code of 1954, Appendix, *infra*, p. 8, provides that a suit to recover taxes paid cannot be maintained in any court until a claim for refund has been duly filed. Section 910 of the Internal Revenue Code of 1939, Appendix, *infra*, p. 7, provides that claims for refund of federal estate taxes must be filed within three years after payment. It is settled that the Commissioner is without power to consider an untimely claim for refund (*United States* v. *Garbutt Oil Co*, 302 U.S. 528), and that in the absence of a timely claim a suit to recover taxes may not be maintained (*United States* v. *Felt & Tarrant Co.*, 283 U.S. 269, 272).

The refund claim on which the instant suit is founded concededly was not filed within the three-year period of limitations prescribed in Section 910. The tax was paid in 1951, and the claim was not filed until 1956. (Pet. 13-14.) This statutory condition precedent not having been met, the court below properly held (Pet. 16) that it had "no choice other than to dismiss the suit for failure to comply with the provisions that have been established by law."

2. The taxpayer's contentions are without merit.

(a) The contention (Pet. 9) that the statute of limitations embodied in Section 910 of the Internal

Revenue Code of 1939 does not apply to the State of Illinois, to which the decedent's property escheated, misconceives the issue. The federal estate tax is imposed upon the decedent's estate, not upon those who receive the residue remaining after payment of taxes and other debts. It is the party who pays and sues to recover the federal tax (here, the administrator of the estate) against whom the statute of limitations runs.

(b) Equally without merit is taxpayer's contention (Pet. 7-9) that he was precluded by the Illinois escheat statutes from filing a timely claim for refund of the federal estate tax. To begin with, the contention rests on the premise that the escheat constituted a "transfer" of decedent's property within the meaning of the deduction provisions of Section 812(d) of the Internal Revenue Code of 1939, Appendix *infra*, p. 7, an assumption which the Commissioner rejected in disallowing the refund claim on the merits.[1] (Pet. 19.) The contention rests on the additional unwarranted assumption that the three-year limitations period prescribed in the federal taxing statute was tolled, on the theory that the decedent's property did not finally escheat to the State under Illinois law until the lapse of five years from his death, and that until the formal entry of the escheat orders by the state probate court the claimed right to the deduction did not accrue. Nothing in the governing federal statutes or decisions justifies the taxpayer's assump-

[1] The court below refrained from passing on the merits of the refund claim in view of the taxpayer's failure to file a timely claim.

tion that the limitations period fixed by Congress for filing federal tax refund claims may be extended (or circumscribed) by local law. Moreover, there was nothing to prevent the taxpayer from filing a protective refund claim prior to the expiration of the three-year limitations period; indeed, the refund claim was in fact filed before entry of the second escheat order, but after the three-year limitations period had expired.[2]

(c) Nor is there substance in taxpayer's contention (Pet. 10-11) that the court below disregarded its own rules in entertaining a motion to dismiss filed more than thirty days after service of the petition below. The requirement that a refund claim be timely filed prior to the bringing of an action for refund is jurisdictional in nature. *United States* v. *Felt & Tarrant Co., supra.* It has long been settled that the question of jurisdiction may be raised at any time during the proceedings. See, e.g., *M.C. & L. M. Railway Co.* v. *Swan*, 111 U.S. 379. Rule 16(h) of the court below expressly recognizes this established principle,[3] and the dismissal by it of the refund suit was clearly in accord with that principle and its own rules.

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[2] The refund claim was filed on June 12, 1956, which was several months prior to entry of the second escheat order of December 3, 1956, covering all of the decedent's real property. (Pet. 5-6.) No reason appears for taxpayer's failure to file the claim sufficiently in advance to meet the requirement of the statute of limitations.

[3] Rule 16(h), to which no reference is made by taxpayer, provides that "whenever it appears by suggestion of the parties or otherwise that the Court lacks jurisdiction of the subject matter, the Court shall dismiss the action."

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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JULY, 1959.

APPENDIX

Internal Revenue Code of 1939:

SEC. 812. NET ESTATE.

For the purpose of the tax the value of the net estate shall be determined, in the case of a citizen or resident of the United States by deducting from the value of the gross estate—

* * * * *

(d) [as amended by Sec. 408(a), Revenue Act of 1942, c. 619, 56 Stat. 798, and Sec. 511(a), Revenue Act of 1943, c. 63, 58 Stat. 21] *Transfers for Public, Charitable, and Religious Uses.* —The amount of all bequests, legacies, devises, or transfers (including the interest which falls into any such bequest, legacy, devise, or transfer as a result of an irrevocable disclaimer of a bequest, legacy, devise, transfer, or power, if the disclaimer is made prior to the date prescribed for the filing of the estate tax return or, in the case of a decedent dying on or before October 21, 1942, if the disclaimer is made prior to September 1, 1944) to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, * * *

* * * * *

(26 U.S.C. 1952 ed., Sec. 812.)

SEC. 910. PERIOD OF LIMITATION FOR FILING CLAIMS.

All claims for the refunding of the tax imposed by this subchapter alleged to have been erroneously or illegally assessed or collected must be presented to the Commissioner within three years

next after the payment of such tax. The amount of the refund shall not exceed the portion of the tax paid during the three years immediately preceding the filing of the claim, or if no claim was filed, then during the three years immediately preceding the allowance of the refund.

(26 U.S.C. 1952 ed., Sec. 910.)

Internal Revenue Code of 1954:

SEC. 7422. CIVIL ACTIONS FOR REFUND.

(a) *No Suit Prior to Filing Claim for Refund.* —No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Secretary or his delegate, according to the provisions of law in that regard, and the regulations of the Secretary or his delegate established in pursuance thereof.

* * * *

(26 U.S.C. 1952 ed., Supp. V, Sec. 7422.)

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